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Attorney for Plaintiff  
BARRY KLIFF

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BARRY KLIFF,

Plaintiff,

vs.

HEWLETT-PACKARD COMPANY, a  
Delaware Corporation, YVONNE HUNT,  
an individual; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. C-05-01438 JW

~~REVISED~~ **[REVISED] STIPULATED PROTECTIVE  
ORDER**

In response to the Court's August 31, 2005 Order Re Stipulated Protective Order, which addressed a drafting oversight by the parties in their originally submitted Stipulated Protective Order, Defendant Hewlett-Packard Company and Plaintiff Barry Kliff hereby re-submit this [Revised] Stipulated Protective Order and petition the Court to enter it in this action:

1           **1. PURPOSES AND LIMITATIONS**

2           Defendant Hewlett-Packard Company maintains that disclosure and discovery  
3 activity in this action are likely to involve production of confidential, proprietary, or private  
4 information for which special protection from public disclosure and from use for any purpose  
5 other than prosecuting this litigation would be warranted. Plaintiff Barry Kliff has been asked to  
6 agree and has agreed to stipulate to this protective order in order to ameliorate Defendant's  
7 concerns. The parties acknowledge that this Order does not confer blanket protections on all  
8 disclosures or responses to discovery and that the protection it affords extends only to the limited  
9 information or items that are entitled under the applicable legal principles to treatment as  
10 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
11 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
12 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
13 be applied when a Party or non-party seeks permission from the court to file material under seal.

14           **2. DEFINITIONS**

15           **2.1 Party or non-party:** any Party or non-party to this action, including all of  
16 its officers, directors, employees, consultants, retained experts, and outside counsel (and their  
17 support staff).

18           **2.2 Disclosure or Discovery Material:** all items or information, regardless of  
19 the medium or manner generated, stored, or maintained (including, among other things,  
20 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
21 responses to discovery in this matter.

22           **2.3 Confidential Information or Items:** information (regardless of how  
23 generated, stored or maintained) or tangible things that qualify for protection under standards  
24 developed under F.R.Civ.P. 26(c).

25           **2.4 Highly Confidential – Attorneys' Eyes Only Information or Items:**  
26 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or  
27 non-party or nonParty or non-party would create a substantial risk of serious injury that could not  
28 be avoided by less restrictive means.

1                   **2.5     Receiving Party or non-party:** a Party or non-party that receives  
2 Disclosure or Discovery Material from a Producing Party or non-party.

3                   **2.6     Producing Party or non-party:** a Party or non-party that produces  
4 Disclosure or Discovery Material in this action.

5                   **2.7     Designating Party or non-party:** a Party or non-party that designates  
6 information or items that it produces in disclosures or in responses to discovery as "Confidential"  
7 or "Highly Confidential - Attorneys' Eyes Only."

8                   **2.8     Protected Material:** any Disclosure or Discovery Material that is  
9 designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

10                  **2.9     Outside Counsel:** attorneys who are not employees of a Party or non-  
11 party but who are retained to represent or advise a Party or non-party in this action.

12                  **2.10    House Counsel:** attorneys who are employees of a Party or non-party.

13                  **2.11    Counsel (without qualifier):** Outside Counsel and House Counsel (as  
14 well as their support staffs).

15                  **2.12    Expert:** a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or non-party or its counsel to serve as  
17 an expert witness or as a consultant in this action. This definition includes a professional jury or  
18 trial consultant retained in connection with this litigation.

19                  **2.13    Professional Vendors:** persons or entities that provide litigation support  
20 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
22 subcontractors.

### 23                  **3.     SCOPE**

24                  The protections conferred by this Stipulation and Order cover not only Protected  
25 Material (as defined above), but also any information copied or extracted therefrom, as well as all  
26 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
27 presentations by parties or counsel to or in court or in other settings that might reveal Protected  
28 Material.

1

2 **4. DURATION**

3 Even after the termination of this litigation, the confidentiality obligations imposed

4 by this Order shall remain in effect until a Designating Party or non-party agrees otherwise in

5 writing or a court order otherwise directs.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection**

8 Each Party or non-party that designates information or items for protection

9 under this Order must take care to limit any such designation to specific material that qualifies

10 under the appropriate standards. A Designating Party or non-party must take care to designate for

11 protection only those parts of material, documents, items, or oral or written communications that

12 qualify – so that other portions of the material, documents, items, or communications for which

13 protection is not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that

15 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to

16 unnecessarily encumber or retard the case development process, or to impose unnecessary

17 expenses and burdens on other parties), expose the Designating Party or non-party to sanctions.

18 If it comes to a Party or non-party's attention that information or items that it

19 designated for protection do not qualify for protection at all, or do not qualify for the level of

20 protection initially asserted, that Party or non-party must promptly notify all other parties that it is

21 withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in

23 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or

24 ordered, material that qualifies for protection under this Order must be clearly so designated

25 before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 **(a) for information in documentary form** (apart from transcripts of

28 depositions or other pretrial or trial proceedings), that the Producing Party or non-party affix the

legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party or non-party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party or non-party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party or non-party has identified the documents it wants copied and produced, the Producing Party or non-party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party or non-party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party or non-party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

**(b) for testimony given in deposition or in other pretrial or trial proceedings,** that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to

1 have up to 20 days to identify the specific portions of the testimony as to which protection is  
 2 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY  
 3 CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that  
 4 are appropriately designated for protection within the 20 days shall be covered by the provisions  
 5 of this Stipulated Protective Order.

6 Transcript pages containing Protected Material must be separately bound  
 7 by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"  
 8 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or  
 9 non-party offering or sponsoring the witness or presenting the testimony.

10 (c) **for information produced in some form other than**  
 11 **documentary, and for any other tangible items.** that the Producing Party or non-party affix in a  
 12 prominent place on the exterior of the container or containers in which the information or item is  
 13 stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 14 ONLY." If only portions of the information or item warrant protection, the Producing Party or  
 15 non-party, to the extent practicable, shall identify the protected portions, specifying whether they  
 16 qualify as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

17 **5.3 Inadvertent Failure to Designate.** If timely corrected, an inadvertent  
 18 failure to designate qualified information or items as "Confidential" or "Highly Confidential –  
 19 Attorneys' Eyes Only" does not, standing alone, waive the Designating Party or non-party's right  
 20 to secure protection under this Order for such material. If material is appropriately designated as  
 21 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" after the material was initially  
 22 produced, the Receiving Party or non-party, on timely notification of the designation, must make  
 23 reasonable efforts to assure that the material is treated in accordance with the provisions of this  
 24 Order.

## 25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party  
 27 or non-party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
 28 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party

or non-party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

**6.2 Meet and Confer.** A Party or non-party that elects to initiate a challenge to a Designating Party or non-party's confidentiality designation must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party or non-party. In conferring, the challenging Party or non-party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party or non-party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party or non-party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

**6.3 Judicial Intervention.** A Party or non-party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party or non-party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party or non-party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party or non-party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party or non-party's designation.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

**7.1 Basic Principles.** A Receiving Party or non-party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected



1 Material may be disclosed only to the categories of persons and under the conditions described in  
 2 this Order. When the litigation has been terminated, a Receiving Party or non-party must comply  
 3 with the provisions of section 11, below.

4 Protected Material must be stored and maintained by a Receiving Party or non-  
 5 party at a location and in a secure manner that ensures that access is limited to the persons  
 6 authorized under this Order.

7 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless  
 8 otherwise ordered by the court or permitted in writing by the Designating Party or non-party, a  
 9 Receiving Party or non-party may disclose any information or item designated CONFIDENTIAL  
 10 only to:

11 (a) the Receiving Party or non-party's Outside Counsel of record in this  
 12 action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the  
 13 information for this litigation and who have signed the "Agreement to Be Bound by Protective  
 14 Order" that is attached hereto as Exhibit A;

15 (b) the parties themselves, including the officers, directors and  
 16 employees (including House Counsel) of the Receiving Party or non-party to whom disclosure is  
 17 reasonably necessary for this litigation and who have signed the "Agreement to be Bound by  
 18 Protective Order" (Exhibit A);

19 (c) experts (as defined by this Order) of the Receiving Party or non-  
 20 party to whom disclosure is reasonably necessary for this litigation and who have signed the  
 21 "Agreement to Be Bound by Protective Order" (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters, their staffs, and professional vendors to whom  
 24 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 25 Bound by Protective Order" (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom disclosure  
 27 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
 28 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal



Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(g) the author of the document or the original source of the information.

**7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party or non-party, a Receiving Party or non-party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party or non-party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Receiving Party or non-party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party or non-party must so notify the Designating Party or non-party, in writing (by

1 fax, if possible) immediately and in no event more than three court days after receiving the  
2 subpoena or order. Such notification must include a copy of the subpoena or court order.

3 The Receiving Party or non-party also must immediately inform in writing the  
4 Party or non-party who caused the subpoena or order to issue in the other litigation that some or  
5 all the material covered by the subpoena or order is the subject of this Protective Order. In  
6 addition, the Receiving Party or non-party must deliver a copy of this Stipulated Protective Order  
7 promptly to the Party or non-party in the other action that caused the subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested parties to the  
9 existence of this Protective Order and to afford the Designating Party or non-party in this case an  
10 opportunity to try to protect its confidentiality interests in the court from which the subpoena or  
11 order issued. The Designating Party or non-party shall bear the burdens and the expenses of  
12 seeking protection in that court of its confidential material – and nothing in these provisions  
13 should be construed as authorizing or encouraging a Receiving Party or non-party in this action to  
14 disobey a lawful directive from another court.

#### 15 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party or non-party learns that, by inadvertence or otherwise, it has  
17 disclosed Protected Material to any person or in any circumstance not authorized under this  
18 Stipulated Protective Order, the Receiving Party or non-party must immediately (a) notify in  
19 writing the Designating Party or non-party of the unauthorized disclosures, (b) use its best efforts  
20 to retrieve all copies of the Protected Material, (c) inform the person or persons to whom  
21 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or  
22 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
23 Exhibit A.

#### 24 10. FILING PROTECTED MATERIAL

25 Without written permission from the Designating Party or non-party or a court  
26 order secured after appropriate notice to all interested persons, a Party or non-party may not file  
27 in the public record in this action any Protected Material. A Party or non-party that seeks to file  
28 under seal any Protected Material must comply with Civil Local Rule 79-5.

11. **FINAL DISPOSITION**

Unless otherwise ordered or agreed in writing by the Producing Party or non-party, within sixty days after the final termination of this action, each Receiving Party or non-party must return all Protected Material to the Producing Party or non-party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party or non-party, the Receiving Party or non-party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party or non-party must submit a written certification to the Producing Party or non-party (and, if not the same person or entity, to the Designating Party or non-party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party or non-party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4, above.

12. **MISCELLANEOUS**

12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order no Party or non-party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated


1 Protective Order. Similarly, no Party or non-party waives any right to object on any ground to  
 2 use in evidence of any of the material covered by this Protective Order.

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 MORGAN, LEWIS & BOCKIUS LLP

5  
 6 DATED:


9/14/05

  
 7 Alexander Nestor  
 8 Attorneys for Defendants Hewlett-Packard  
 9 Company and Yvonne Hunt

10 LAW OFFICES OF BARRY B. KAUFMAN, APC

11 DATED:


9-13-05

  
 12 Barry B. Kaufman  
 13 Attorney for Plaintiff Barry Kliff

14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

15 DATED:

12/16/05

  
 16 The Honorable ~~James Ware~~ Patricia V. Trumbull  
 17 United States ~~District~~ Judge  
 18 Magistrate

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of *Barry Kliff v. Hewlett-Packard Company and Yvonne Hunt*, Case No. C 05-01438 JW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2005/2006, at \_\_\_\_\_.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_